

Appeal from decision of the California State Office, Bureau of Land Management, declaring one millsite claim and one lode mining claim abandoned and void. CA MC 42620 and CA MC 42621.

Affirmed in part; set aside and remanded in part.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

2. Notice: Generally -- Regulations: Generally -- Statutes
All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.
3. Administrative Authority: Laches -- Estoppel -- Laches
The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

4. Federal Land Policy and Management Act of 1976: Assessment Work
-- Mining Claims: Millsites

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

APPEARANCES: Steven S. Kane, Esq., San Diego, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The Otay Mining Company appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated March 26, 1981, declaring the Otay Mining Company millsite claim (CA MC 42620) and the Ocean View lode mining claim (CA MC 42621) abandoned and void for failure to file evidence of annual assessment work or a notice of intention to hold the claims on or before October 22, 1979, as required by statute and regulation. 43 U.S.C. § 1744 (1976); 43 CFR Subpart 3833.

The notice of location for the Ocean View lode claim, located on April 12, 1970, was recorded with BLM on October 11, 1979. The notice of location for the millsite claim was recorded with BLM on the same date. Proof of labor for the lode claim was not filed with BLM until December 26, 1979. There is no record of any notice of intention to hold the millsite having been filed with BLM.

In the statement of reasons for appeal, appellant contends that the failure to file the required documents, if such failure occurred, was merely a technical violation of the statute and regulation, the purposes of which would not be advanced or aided by a declaration that the subject claims are abandoned and void. Appellant further asserts that a document forwarded to it by BLM and entitled "Amended Notice to Mining Claimants" misstated the regulation on which it was based; that it failed to give the deadline (October 22, 1979) for filing the required documents; that it was a confusing, vague, and unintelligible notice upon which appellant could be reasonably expected to rely; and that appellant was materially misled by the notice. Finally, appellant contends that BLM is barred from declaring the mining claims abandoned and void due to the delay in issuing a decision.

[1] Under section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), the owner of a mining claim located on or before October 21, 1976, must file notice of intention to hold the claim or evidence of the performance of annual assessment work on the claim in the proper BLM office on or before October 22, 1979, and prior to December 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed

conclusively to constitute an abandonment of the claim by the owner, and renders the claim void. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a); James N. Tibbals, 58 IBLA 42 (1981); Margaret E. Peterson, 55 IBLA 136 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). The conclusive presumption of abandonment is imposed by the statute itself as a matter of law, and the statute does not invest the Secretary of the Interior with authority to waive noncompliance or to afford claimants relief from the statutory consequences. Lynn Keith, *supra*.

[2] Appellant's contention that BLM should be estopped from declaring its claim null and void cannot be sustained. ^{1/} The fact that appellant may have been confused about the requirement of filing evidence of assessment work, while unfortunate, does not excuse appellant from compliance. All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Vivian Sullivan Karlson, 60 IBLA 10 (1981); James N. Tibbals, *supra*.

[3] While the delay in the BLM decision is regrettable, it is well established that the authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties. 43 CFR 1810.3(a); James N. Tibbals, *supra*.

[4] BLM's invalidation of the Otay Mining Company millsite was based on a regulation which requires the owner of an unpatented millsite to file a notice of intention to hold the millsite on or before December 30 of each year following the year of recording. 43 CFR 3833.2-1(d). BLM supported its decision by invoking the provisions of 43 CFR 3833.4(a), which creates a conclusive presumption of abandonment upon a claimant's failure to comply with 43 CFR 3833.2-1.

The statutory requirement for filing evidence of assessment work or notice of intention to hold mandated by section 314(a) of

^{1/} The BLM announcement upon which appellant allegedly relied, a copy of which is attached to the statement of reasons for appeal, discusses the obligation imposed by section 314 of the Act of Oct. 21, 1976, to file with BLM two types of documents: A copy of the notice of location and a copy of the evidence of assessment work or notice of intention to hold the claim. The announcement states that owners of claims located prior to Oct. 21, 1976, must file with BLM within 3 years a copy of the notice of location. The announcement further states at page 2 that owners of claims located prior to Oct. 21, 1976, shall file evidence of assessment work or notice of intention to hold the claim within the 3 years "above stated" and prior to Dec. 31 of each calendar year following the calendar year of recording with BLM. Thus, the announcement created no reasonable basis for doubt as to the requirement that evidence of assessment work or notice of intention to hold the claim be filed with BLM by Oct. 22, 1979.

FLPMA, 43 U.S.C. § 1744(a) (1976), pertains by its terms to owners of an "unpatented lode or placer mining claim." This may be distinguished from the provisions of section 314(b) of FLPMA with respect to recordation of the certificate or notice of location with BLM, which expressly applies to owners of an "unpatented lode or placer mining claim or mill or tunnel site." 43 U.S.C. § 1744(b) (1976). This Board has previously held this distinction to be significant in signalling a statutory intent to limit the requirement of filing evidence of assessment work or notice of intention to hold to lode or placer mining claims, as opposed to millsites. Feldslite Corporation of America, 56 IBLA 78, 80-81, 88 I.D. 643, 645 (1981). The regulation at 43 CFR 3833.2-1(d) requires the owner of a millsite to file notice of intention to hold the millsite with BLM although the statute which is the authority for finding a conclusive presumption of abandonment in the absence of filing does not contain such a requirement. To the extent the regulatory filing requirement exceeds the statutory filing requirement, the failure to comply timely with the filing requirement is appropriately treated as a curable defect of which the claimant should be given notice and a reasonable opportunity to comply with the regulatory requirement prior to any decision declaring the claim abandoned and void. Feldslite Corporation of America, supra at 82-83, 88 I.D. at 646; see Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as to the lode mining claim and set aside and remanded as to the millsite.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

